



**ENVIRONMENTAL PROTECTION AGENCY**

**6560-50-P**

**40 CFR Part 745**

**[EPA-R06-OPPT-2011-0989; FRL-9649-6]**

**Lead Requirements for Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities; State of Arkansas's Authorization Application, Notice of Self-certification Program Authorization**

**AGENCY:** Environmental Protection Agency (EPA).

**ACTION:** Notice of program authorization; request for comments.

**SUMMARY:** On July 8, 2011, the State of Arkansas submitted an application for EPA approval for the Arkansas Department of Health (ADH) to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). Previously Arkansas Department of Environmental Quality (ADEQ) was approved to administer this program in Arkansas, but the Arkansas Legislature revoked the State's prior statute establishing the Arkansas lead-based paint program and passed a new statute establishing a State lead-based paint program and changing the implementing state agency from ADEQ to ADH. By this action, we are withdrawing our prior authorization of Arkansas with ADEQ as the implementing agency and authorizing Arkansas for the lead-based paint program pursuant to the Arkansas July 8, 2011, request with the ADH as the implementing state agency. This document announces the receipt of Arkansas's rules established pursuant to its new 2011 statutory authority, and provides a 45-day

public comment period and an opportunity to request a public hearing on the application for the ADH's program and on the withdrawal and termination of the prior program administered in Arkansas by ADEQ. Arkansas has provided a certification that their program for implementation by ADH meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program submitted by Arkansas on behalf of the ADH is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, the EPA Administrator will disapprove the program, at which time a document will be issued in the Federal Register and the Federal program will be established.

**DATES:** Public comments on the authorization application must be submitted on or before **[insert date 45 days from date of publication in the Federal Register.]** Public hearing requests must be submitted on or before **[insert date 15 days from date of publication in the Federal Register.]**

If a public hearing is requested and granted, the hearing will be held on April 24, 2012, 1:30 p.m., at the Arkansas Department of Health, Center for Public Health Practice, 4815 West Markham St., Little Rock, Arkansas. If a public hearing is not requested, this meeting time and place will be canceled. Therefore, individuals are advised to verify the status of the public hearing by contacting Cindy Parker (name, telephone number, and

address are provided in the ``FOR FURTHER INFORMATION CONTACT" section of this document) before the April 24, 2012, public hearing date.

Comments, identified by Docket Control Number EPA-R06-OPPT-2011-0989, must be received on or before **[insert date 45 days from publication in the Federal Register.]**

In addition, a public hearing request must be submitted on or before **[insert date 15 days from date of publication in the Federal Register.]**

#### **ADDRESSES:**

You may submit comments through the mail, in person, or electronically. To ensure proper receipt by EPA, it is important that you identify Docket Identification Number EPA-R06-OPPT-2011-0989 in the subject line on the first page of your response. Submit your comments by one of the following methods:

1. <http://www.regulations.gov>: Follow the on-line instructions for submitting comments.
2. *By mail*: Submit your comments and hearing requests to: Cindy Parker, Toxics Section, 6PD-T, US EPA Region 6, 1445 Ross Avenue, Dallas, Texas, 75202-2733.
3. *By person or courier*: Deliver your comments and hearing requests to: Toxics Section, Multimedia Planning and Permitting Division, US Environmental Protection Agency, Region 6, 1445 Ross Avenue, Ste 700, Dallas, Texas 75202-2733. Such deliveries are only accepted during the Regional Office's normal hours of operation. The Regional Office's official hours of business are Monday through Friday, 8:30 to 4:30, excluding federal holidays.
4. *By fax*: 214-665-6655.

5. *By email:* You may submit your comments and hearing requests electronically by email to: [parker.cindy@epa.gov](mailto:parker.cindy@epa.gov), or mail your computer disk to the address identified above. Do not submit any information electronically that you consider Confidential Business Information (CBI). Electronic comments must be submitted as an ASCII file avoiding the use of special characters and any form of encryption. Comments and data will also be accepted on standard disks in Microsoft Word or ASCII file format.

*Instructions:* Direct your comments to Docket ID Number EPA-R06-OPPT-2011-0989. EPA's policy is that all comments received will be included in the public docket without change and may be made available online at <http://www.regulations.gov> including any personal information provided, unless the comment includes information claimed to be Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Do not submit information that you consider to be CBI or otherwise protected through <http://www.regulations.gov> or email. The <http://www.regulations.gov> website is an "anonymous access" system, which means EPA will not know your identity or contact information unless you provide it in the body of your comment. If you send an email comment directly to EPA without going through <http://www.regulations.gov>, your email address will be automatically captured and included as part of the comment that is placed in the public docket and made available on the Internet. If you submit an electronic comment, EPA recommends that you include your name and other contact information in the body of your comment and with any disk or CD-ROM you submit. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Electronic files should avoid the use of special characters or any form of encryption, and be free of any defects

or viruses. For additional information about EPA's public docket, visit the EPA Docket Center homepage at <http://www.epa.gov/epahome/dockets.htm>.

*Docket:* All documents in the docket are listed in the <http://www.regulations.gov> index. Although listed in the index, some information is not publicly available, e.g., CBI or other information whose disclosure is restricted by statute. Certain other material, such as copyrighted material, will be publicly available only in hard copy. Publicly available docket materials are available either electronically in <http://www.regulations.gov> or in hard copy.

Do not submit this information to EPA through regulations.gov or email. Clearly mark on each page the part or all of the information that you claim to be CBI. For CBI information in a disk or CD-ROM that you mail to EPA, mark the outside of the disk or CD-ROM that you mail to EPA as CBI, and then identify electronically within the disk or CD-ROM the specific information that is claimed as CBI. In addition to one complete version of the comment that includes information claimed as CBI, a copy of the comment that does not contain the information claimed as CBI must be submitted for inclusion in the public docket. Information so marked as CBI will not be disclosed except in accordance with procedures set forth in 40 C.F.R. Part 2. If you have any questions about CBI or the procedures for claiming CBI, please consult the technical person identified under **FOR FURTHER INFORMATION CONTACT**.

**FOR FURTHER INFORMATION CONTACT:** Cindy Parker, Lead-Based Paint Program, Toxics Section, United States Environmental Protection Agency Region 6, 1445 Ross Avenue, Ste 1200, Dallas, Texas 75202. The telephone number where Ms.

Parker can be reached is: (214) 665-7291. Ms. Parker can be contacted via electronic mail at [parker.cindy@epa.gov](mailto:parker.cindy@epa.gov).

## **SUPPLEMENTARY INFORMATION:**

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### **I. General Information**

#### *A. Does this Action Apply to Me?*

You may be potentially affected by this action if you perform lead-based paint inspections, lead hazard screens, risk assessments or abatements in target housing or child-occupied facilities or if you operate a training program for individuals who perform any of these activities. “Target housing” is defined in section 401 of TSCA as any housing constructed prior to 1978, except housing for the elderly or persons with disabilities (unless any child under age 6 resides or is expected to reside in such housing) or any 0-bedroom dwelling. Under this rule, a child-occupied facility is a building, or a portion of a building constructed prior to 1978, visited regularly by the same child, under 6 years of age, on at least 2 different days within any week (Sunday through Saturday period), provided that each day’s visit lasts at least 3 hours and the combined weekly visits last at least 6 hours, the combined annual visits last at least 60 hours.

Potentially-affected entities can include, but are not limited to:

- Real estate (NAICS code 531), e.g., lessors of residential buildings and dwellings, residential property managers.
- Child day care services (NAICS code 624410).
- Elementary and secondary schools (NAICS code 611110), e.g., elementary schools with kindergarten classrooms.
- Other technical and trade schools (NAICS code 611519), e.g., training providers.
- Lead abatement professionals (NAICS code 562910), e.g., firms and supervisors engaged in lead-based paint activities.

This listing is not intended to be exhaustive, but rather provides a guide for readers regarding entities likely to be affected by this action. Other types of entities not listed in this unit could also be affected. The North American Industrial Classification System (NAICS) codes have been provided to assist you and others in determining whether this action might apply to certain entities.

If you have any questions regarding the applicability of this action to a particular entity, consult the technical person listed under **FOR FURTHER INFORMATION CONTACT**.

*B. How Can I Get Additional Information, including Copies of this Document or Other Related Documents?*

1. Electronically: you may obtain electronic copies of this document, and certain other related documents that might be available electronically, from the EPA Internet Home Page at <http://www.epa.gov/> or from <http://www.regulations.gov/>. You can also go directly to the Federal Register listings at <http://www.gpoaccess.gov/fr/>.
2. In person: The State submittal is also available for public inspection during official business hours, by appointment, at the Arkansas Department of Health, Center for Public Health Practice, Applied Epidemiology Branch, Environmental Epidemiology Section,

4815 West Markham St, Little Rock, Arkansas. You may also read this document, and certain other related documents, by visiting the United States Environmental Protection Agency, Region 6 Office, 1445 Ross Avenue, Ste 700, Dallas, Texas 75202-2733. You should arrange your visit to the EPA office by contacting the technical person listed under **FOR FURTHER INFORMATION CONTACT**. Also, EPA has established an official record for this action under Docket Control Number EPA-R06-OPPT-2011-0989. The official record consists of the documents specifically referenced in this action, this notice, the State of Arkansas program authorization applications, any public comments received during an applicable comment period, and other information related to this action.

*C. What Should I Consider as I Prepare My Comments for EPA?*

You may find the following suggestions helpful for preparing your comments.

1. Explain your views as clearly as possible.
2. Describe any assumptions that you use.



3. Provide copies of any technical information and/or data you use that support your views.
4. If you estimate potential burden or costs, explain how you arrive at the estimate that you provide.
5. Provide specific examples to illustrate your concerns.
6. Offer alternative ways to improve the notice or collection activity.
7. Make sure to submit your comments by the deadline in this notice.
8. To ensure proper receipt by EPA, identify the Docket Control Number assigned to this action in the subject line on the first page of your response. You may also provide the name, date, and Federal Register citation.

## **II. Background**

### *A. What Action is the Agency Taking?*

Originally, on March 29, 1999, the State of Arkansas submitted and EPA approved an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). That application and approval stated Arkansas' lead-based paint program was to be administered by the Lead-Based Paint Section of the Arkansas Department of Environmental Quality (ADEQ).

On May 19, 1999, EPA Region 6 published a notice announcing receipt of the State of Arkansas program authorization application. In the application, Arkansas provided a certification that their program meets the requirements for approval of a State

program under section 404 of TSCA. Therefore, pursuant to section 404, the program was deemed authorized as of the date of submission, which was March 29, 1999. (See, 64 FR 27266, May 19, 1999).

In 2011, the Arkansas State Legislature, in the Regular Session of the 88<sup>th</sup> General Assembly, passed the Lead-Based Paint Hazard Act of 2011 revoking the prior state statutory authority and creating a new State statutory authority for the lead-based program. The only substantive difference between the prior law and the current law is that the Legislature transferred the authority to operate the lead-based paint program from the Arkansas Department of Environmental Quality to the Arkansas Department of Health, effective July 1, 2011. (See, Ark. Code Ann. §§ 20-27-2401 – 2409). Because the Arkansas Legislature revoked the statutory authority which formed the basis for our May 19, 1999, approval, EPA is considering this revocation of state authority a request by the State to voluntarily return the program to EPA and therefore EPA is withdrawing its May 19, 1999, lead-based paint approval. Since the Arkansas Legislature, by this same statute, established a new authority for a lead-based paint program and designated the Arkansas Department of Health as the new state agency to implement the program we also are approving in this action Arkansas' newly submitted program.

On July 8, 2011, the State of Arkansas submitted an application for EPA approval to administer and enforce training and certification requirements, training program accreditation requirements, and work practice standards for lead-based paint activities in target housing and child-occupied facilities under section 402 of the Toxic Substances Control Act (TSCA). This notice announces the receipt of Arkansas's rules, and provides a 45-day public comment period and an opportunity to request a public hearing on the

application. Arkansas has provided a certification that their program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State program, EPA will disapprove the program, at which time a notice will be issued in the Federal Register and the Federal program will be established. The State program became effective with EPA's receipt of Arkansas' certification on July 8, 2011. Submit comments on the authorization application and withdrawal and termination of the May 19, 1999, program on or before **[insert date 45 days from publication in the Federal Register]**.

Public hearing requests must be submitted on or before **[insert date 15 days from publication in the Federal Register]**. If a public hearing is requested and granted, the hearing will be held on April 24, 2012, 1:30 p.m., at the Arkansas Department of Health, Center for Public Health Practice, 4815 West Markham St., Little Rock, Arkansas. If a public hearing is not requested, this meeting time and place will be canceled. Therefore, individuals are advised to verify the status of the public hearing by contacting Cindy Parker (name, telephone number, and address are provided in the "FOR FURTHER INFORMATION CONTACT" section of this notice) before the April 24, 2012, public hearing date.

*B. What is EPA's Authority for Taking this Action?*

On October 28, 1992, the Housing and Community Development Act of

1992, Public Law 102-550, became law. Title X of that statute was the Residential Lead-Based Paint Hazard Reduction Act of 1992. That Act amended TSCA (15 U.S.C. 2601 et seq.) by adding Title IV (15 U.S.C. 2681-92), entitled “Lead Exposure Reduction.”

Section 402 of TSCA authorizes EPA to promulgate final regulations governing lead-based paint activities. Lead-based paint activities are defined in section 402(b) of TSCA and authorizes EPA to regulate lead-based paint activities in target housing, public buildings built prior to 1978, commercial buildings, bridges and other structures or superstructures. Those regulations are to ensure that individuals engaged in such activities are properly trained, that training programs are accredited, and that individuals engaged in these activities are certified and follow documented work practice standards. Under section 404, a State may seek authorization from EPA to administer and enforce its own lead-based paint activities program.

On August 29, 1996 (61 FR 45777) (FRL-5389-9), EPA promulgated final TSCA section 402/404 regulations governing lead-based paint activities in target housing and child-occupied facilities (a subset of public buildings). Those regulations are codified at 40 CFR part 745, and allow both States and Indian Tribes to apply for program authorization. On August 31, 1998, EPA instituted the Federal program in States or Indian Country without an authorized program, as provided by section 404(h) of TSCA.

States and Indian Tribes that choose to apply for program authorization must submit a complete application to the appropriate Regional EPA office for review. Those applications will be reviewed by EPA within 180 days of receipt of the complete

application. To receive EPA approval, a State or Indian Tribe must demonstrate that its program is at least as protective of human health and the environment as the Federal program, and provides adequate enforcement (section 404(b) of TSCA, 15 U.S.C. 2684(b)). EPA's regulations (40 CFR part 745, subpart Q) provide the detailed requirements a State or Tribal program must meet in order to obtain EPA approval.

A State may choose to certify that its lead-based paint activities program meets the requirements for EPA approval by submitting a letter signed by the Governor or Attorney General stating that the program meets the requirements of section 404(b) of TSCA. Upon submission of such certification letter, the program is deemed authorized until such time as EPA disapproves the program application or withdraws the authorization.

Section 404(b) of TSCA provides that EPA may approve a program application only after providing notice and an opportunity for a public hearing on the application. Therefore, by this notice EPA is soliciting public comment on whether Arkansas's application meets the requirements for EPA approval. This notice also provides an opportunity to request a public hearing on the application. Arkansas has provided a self-certification letter from the Governor and Attorney General that its program meets the requirements for approval of a State program under section 404 of TSCA. Therefore, pursuant to section 404, the program is deemed authorized as of the date of submission. If EPA finds that the program does not meet the requirements for approval of a State

program, EPA will disapprove the program, at which time a notice will be issued in the Federal Register and the Federal program will be established in Arkansas.

### **III. State Program Description Summaries**

The following program summary is from Arkansas' self-certification application:

ARKANSAS DEPARTMENT OF HEALTH, TSCA SECTION  
402 LEAD-BASED PAINT TRAINING AND CERTIFICATION  
PROGRAM SUMMARY

The Arkansas Department of Health is seeking authorization to administer the Environmental Protection Agency Lead-Based Paint Activities in Target Housing and Child-Occupied Facilities program as provided by Section 402 of the Toxic Substances Control Act and as promulgated into rule in 40 CFR Section 745 and this document serves as notification of this intent to seek authorization.

Currently, the Arkansas Department of Health has statutory authority pursuant to Arkansas Code Annotated §§ 20-27-2401-2409 to administer the Lead-based Paint Hazards Act of 2011. This Act ensures that lead-based paint activities conducted in target housing or child-occupied facilities in the state of Arkansas are performed by trained and certified individuals who are employed by licensed lead-based paint firms. The Act also ensures that the individuals are trained by lead-based paint training providers who teach the curriculum outlined in 40 CFR Section 745 and that the training providers receive review and approval prior to

receiving a license and are audited to maintain a standard of instruction. Finally, the Act ensures that certified individuals, as well as licensed firms, perform lead-based paint activities according to work practices approved by 40 CFR Section 745. The Lead-based Paint Hazard Act of 2011 is as protective of human health and the environment as the provisions of 40 CFR Section 745.

The Lead-based Paint Hazard Act of 2011 also provides for the promulgation of the Arkansas Board of Health Rules pertaining to Lead-based Paint Activities. These Rules specifically detail provisions for becoming a lead-based paint training provider. This includes a review of the training and experience of the persons offering the training and the type of facility within which the training will be conducted. The Rules pertaining to Lead-based paint Activities also requires that the training adhere to a course curriculum as specified in 40 CFR Section 745. Finally, the Rules allow for course audit and, if necessary, disciplinary actions that may include suspension; revocation; modification; or injunction; or pursuit of criminal prosecution.

Arkansas Board of Health Rules pertaining to Lead-based Paint Activities also provide that individuals apply for certification and firms apply for licensing prior to conducting lead-based paint activities in the state of Arkansas. The certification process ensures that individuals received training from a training provider accredited by the State of Arkansas, or a training provider approved by the Environmental Protection

Agency, or a state or tribal program approved by the Environmental Protection Agency. Further, the certification process ensures that individuals in certain disciplines have proven a certain level of proficiency by achieving a passing score on an examination not conducted in conjunction with the training course test administered by the training provider. These Rules also mandate refresher courses for the lead-based paint professionals.

Lead-based paint firms are also required to submit to an application process in which the firm assures that only trained and certified lead-based paint professionals will be employed to conduct lead-based paint activities in the state of Arkansas. Both firms and individuals are subject to disciplinary action for submitting false information; failing to comply with worker practice standards; employing uncertified individuals; and failing to comply with record-keeping requirements. This disciplinary action may include suspension; revocation; modification; injunction; or pursuit of criminal prosecution.

Arkansas Board of Health Rules pertaining to Lead-based Paint Activities provides standards for work practice of lead-based paint activities in the state of Arkansas and specifically references the standards stated in 40 CFR Section 745. In conjunction with the work practice standards, the Rules mandate all laboratory testing be conducted by a



laboratory approved by the Environmental Protection Agency pursuant to the National Lead Laboratory Accreditation Program (NLLAP).

The Rules and the Act are administered by the Applied Epidemiology Branch of the Arkansas Department of Health. The Branch includes personnel who review notifications of lead-based paint abatements; inspect lead-based paint abatements – including reviewing work practices, certifications, and licensures; conduct public outreach; review applications by individuals and firms; audit training providers; and conduct enforcement actions for violations.

#### **IV. Federal Overfiling**

Section 404(b) of TSCA makes it unlawful for any person to violate, or fail or refuse to comply with, any requirement of an approved state program. Therefore, EPA reserves the right to exercise its enforcement authority under TSCA against a violation of, or a failure or refusal to comply with, any requirement of an authorized state program.

#### **V. Withdrawal of Authorization**

Pursuant to section 404(c) of TSCA, the EPA Administrator may withdraw authorization of a State or Indian tribal renovation, repair and painting program, and/or a lead-based paint pre-renovation education program, after notice and opportunity for corrective action, if the program is not being administered or enforced in compliance with standards, regulations, and other requirements established under the authorization. The

procedures U.S. EPA will follow for the withdrawal of an authorization are found at 40 C.F.R. 745.324(i).

**List of Subjects in 40 CFR Part 745**

Environmental protection, Hazardous substances, Lead Poisoning, Reporting and record keeping requirements.

Dated: March 7, 2012.

Al Armendariz,  
Regional Administrator,  
Region 6.

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